

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
KM Television of El Dorado, L.L.C.)	
)	CSR-6275-M
v.)	
)	
Southwest Cablevision, Inc.)	
)	
Request for Mandatory Carriage of)	
Television Station KEJB(TV),)	
El Dorado, Arkansas)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 7, 2004

Released: May 13, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KM Television of El Dorado, L.L.C. ("KM"), licensee of television broadcast station KEJB(TV), Channel 43, El Dorado, Arkansas ("KEJB" or the "Station") filed the above-captioned must carry complaint against Southwest Cablevision, Inc. ("Southwest"), for failing to carry the signal of KEJB on its cable systems serving Banks Springs, Clarks, Columbia Heights, Gilbert and Grayson located in Caldwell and Franklin Parishes, Louisiana.¹ No opposition to the complaint was received.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.² A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of

¹ Complaint at 1-2.

² 8 FCC Rcd 2965, 2976-2977 (1993).

³ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets base on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(c). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e).

others, based on measured viewing patterns.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.⁴ One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁵ Should a station fail to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁶

III. DISCUSSION

4. In support of its complaint, KEJB states that it is a full-power television station currently operating under program test authority and licensed to El Dorado, Arkansas, which is in the Monroe, Louisiana – El Dorado, Arkansas DMA.⁷ It states further that Southwest operates the cable television systems at issue in the Monroe, Louisiana – El Dorado, Arkansas DMA.⁸ KEJB asserts that on October 2, 2003, it formally requested mandatory carriage of its signal on Southwest's cable systems serving Banks Springs, Clarks, Columbia Heights, Gilbert and Grayson, Louisiana.⁹ KEJB asserts that Southwest did not respond in writing to its October 2, 2003 request for mandatory carriage in Banks Springs, Clarks, Columbia Heights, Gilbert and Grayson, Louisiana, within 30 days of receipt of such request as required by Section 76.61(a)(2) of the Commission's rules and that, as a result, it is filing the instant complaint 60 days after Southwest should have responded to the October 2, 2003 letter.¹⁰ KEJB asserts that it is committed to deliver, at its own expense, a good quality signal to Southwest's principal headends.¹¹

5. At the outset, we note that the Commission's must carry requirements set forth a two-part notification process with which stations are required to comply: the retransmission consent/must carry election notification required by Section 76.64(f) of the Commission's rules and the demand for carriage by qualified stations set out in Section 76.61(a) of the Commission's rules.¹² In that regard, we disagree with KEJB's assertion that its October 2, 2003 letter was a demand for mandatory carriage. The text of the letter clearly indicates that it was a must carry election letter only, not a demand for carriage as required by Section 76.61(a) of the Commission's rules. KEJB's October 2, 2003 letter did not trigger the statutory 60-day complaint cycle envisioned in Section 76.61(a) of the Commission's rules. Thus, there was no requirement that Southwest respond to KEJB's election letter within 30 days. Except for the basic assertion that the October 2, 2003 is the notification Section 76.64(f) requires, there is no supporting evidence to show otherwise. Because KEJB failed to comply with the second part of the Commission's

⁴ See *Must Carry Order*, 8 FCC Rcd at 2990.

⁵ 47 C.F.R. § 76.55(c)(3).

⁶ *Must Carry Order*, 8 FCC Rcd at 2991.

⁷ Complaint at 2.

⁸ *Id.*

⁹ *Id.* at 3 and Exhibit B.

¹⁰ *Id.*; see also 47 C.F.R. § 76.61(a)(2).

¹¹ Complaint at 4.

¹² 47 C.F.R. §§ 76.64(f) and 76.61(a).

notification process, and there has been no response from Southwest, the instant complaint is not ripe for adjudication. Holding otherwise would allow KEJB to circumvent the two-part notification process discussed above. Based on the foregoing, we dismiss the instant complaint.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the must carry complaint filed by KM Television of El Dorado, L.L.C., licensee of television broadcast station KEJB(TV), El Dorado, Arkansas, against Southwest Cablevision, Inc. **IS DISMISSED**.

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹³

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹³ 47 C.F.R. § 0.283.